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15
Brief
(3)
Bates
11/20

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application : **Group Art Unit: 3661**
M. Obradovich :
Serial Number: 10/038,346 : **Examiner: E. Gibson**
:
Filed: January 2, 2002 : **Attn. Docket No.: 09800-1028**
:
Title: CENTRALIZED CONTROL AND MANAGEMENT SYSTEM FOR AUTOMOBILES

Commissioner of Patents and Trademarks
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TRANSMITTAL LETTER

GROUP 3661

Sir:

Enclosed are (1) an Appellant's Brief on Appeal under 37 C.F.R. 1.192, in triplicate, and
(2) a check in the amount of \$165.00 to cover the required fee pursuant to 37 C.F.R. 1.17(c).

Respectfully submitted,

Michael L. Obradovich

By: [Signature]

Alex L. Yip
Attorney for Applicant
PTO Registration 34,759
(212) 836-7363

Date: November 7, 2003



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application

M. Obradovich

Serial Number: 10/038,346

Filed: January 2, 2002

Title: MULTIMEDIA INFORMATION AND CONTROL SYSTEM FOR AUTOMOBILES

: **Group Art Unit: 3661**

:

: **Examiner: E. Gibson**

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GROUP 3600

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

Sir:

This is an appeal to the Board of Patent Appeals and Interferences from the Final Rejection, dated June 16, 2003, in which Claims 129-137, 139-146, and 148-154 of the above-referenced application stand rejected.

11/12/2003 AHONDAF1 00000033 10038346

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I. REAL PARTY IN INTEREST

The real party in interest is AMERICAN CALCAR INC.

II. RELATED APPEALS AND INTERFERENCES

There are no related Appeals and/or Interferences.

III. STATUS OF CLAIMS

Claims 129-137, 139-146, and 148-154 are pending in this application. These claims which stand finally rejected are the subject of this appeal. A copy of these claims under appeal are appended hereto (see Appendix A).

VI. STATUS OF AMENDMENTS

A final Office Action rejecting Applicant's claims was mailed on June 16, 2003. The Examiner has twice rejected these claims as being obvious over the same references. No amendment to the final Office Action has been presented.

V. SUMMARY OF THE INVENTION

The Problem Solved by the Invention

The invention is directed to a system and method for assisting a user of a vehicle to select a service provider (e.g., a service station) for servicing the vehicle when maintenance of the vehicle is needed, which, however, may not be urgent. In accordance with the invention, once it

is determined that the vehicle needs maintenance, data (e.g., GPS data) concerning locations of one or more service providers is obtained. Data (e.g., GPS data) concerning the current location of the vehicle is also obtained. The closest service provider is identified based on a comparison of the respective GPS data. The closest service provider is selected to provide the maintenance service when such a service provider is within a predetermined distance (e.g., 5 miles) from the current location of the vehicle. See page 27, line 17 et seq. of the specification.

Information about any service provider selected by the inventive system and method is communicated to the user to prompt the user to drive to the selected service provider for vehicle maintenance. In addition, if the inventive system is put in a navigation mode, the GPS data concerning the selected service provider may be used by the system to direct the user there. See page 27, line 22 et seq. of the specification.

Brief Overview of Appellant's Claims

Claims 129-137, 139-146, and 148-154 are drawn to a system and method for assisting a user of a vehicle to select a service provider for providing a maintenance service to the vehicle. When it is determined that the vehicle needs a maintenance service, the inventive system and method obtains data concerning locations of at least first and second service providers for providing the maintenance service, and the current location of the vehicle. The inventive system and method determines, of the first and second service providers, the closer service provider to the current location of the vehicle. The closer service provider is selected for the maintenance service when the closer service provider is within a predetermined distance from the current location of the vehicle.

VI. ISSUES PRESENTED FOR REVIEW

1. Whether claims 129-137, 139-146, and 148-154 are unpatentable under 35 U.S.C. 103 as being obvious over U.S. Patent No. 5,790,973 issued August 4, 1998 to Blaker *et al.* (hereinafter "Blaker") in view of U.S. Patent No. 6,028,537 issued February 22, 2000 to Suman *et al.* (hereinafter "Suman").

2. Whether claims 129-137, 139-146, and 148-154 are unpatentable under 35 U.S.C. 103 as being obvious over U.S. Patent No. 5,859,628 issued January 12, 1999 to Ross *et al.* (hereinafter "Ross") in view of Suman.

3. Where the Examiner admitted that the claimed invention overcomes the cited art including Blaker in an Office Action, whether the Examiner's rejection of the same claimed invention based on an identical disclosure to Blaker in the newly-cited Suman is proper.

VII. GROUPING OF CLAIMS

It is respectfully submitted that method claims 1-137 and 139-145, and corresponding system claims 146 and 148-154 are individually patentable over the cited art. All claims are to be considered separately for purposes of this appeal.

VIII. ARGUMENTS

1. THE EXAMINER HAS FAILED TO ESTABLISH A *PRIMA FACIE* CASE OF OBVIOUSNESS UTILIZING BLAKER IN VIEW OF SUMAN.

At the outset, it should be pointed out that the relevant disclosure of Suman, i.e., the portion of Suman relied upon by the Examiner to reject the claimed invention in the final Office Action mailed June 16, 2003 (see Appendix B), is word for word the same (except numeral references and figure numbers) as Blaker. Specifically, Figs. 41 and 43 of Suman matches Figs. 1(a) and 4 of Blaker. The relevant text of Suman at col. 33, line 23 through col. 35, line 56 matches the text of Blaker at col. 2, lines 16-59 and col. 4, line 6 through col. 5, line 58.¹

¹ Although the Examiner also cited col. 36 of Suman, it is, however, directed to vehicle personalization and remote control functions which is not applicable to the claimed invention.

Suman (or Blaker) discloses a technique for notifying a driver to exit a limited access highway for fuel in accordance with last exit warning subroutine 650 (50 in Blaker). See Fig. 43 of Suman (Fig. 4 of Blaker). As disclosed, subroutine 650 compares the distances from the vehicle's current location to the service area S_1 at an upcoming exit and S_2 at a farther exit to determine if the vehicle has sufficient remaining fuel to reach S_2 . If the distance to S_2 is greater than the range allowed by the remaining fuel, the driver is notified to get off the upcoming exit to refuel at S_1 . Such logic behind subroutine 650 is stated in Suman (or Blaker) as follows:

The program then compares the distance from the vehicle's current location to each of the service areas S_1 and S_2 of Fig. 41 to determine if the remaining fuel is sufficient to reach the second service area S_2 represented by distance X in the test block 660 of Fig. 43. If this distance is greater than the range available to the vehicle, a notification signal is sent to the driver as indicated by block 662 [T]he notification signal alerts the driver that he or she should exit the limited access highway at exit A such that the first service area S_1 can be accessed prior to running out of fuel.

Col. 34, lines 59 et seq. of Suman (col. 4, lines 62 et seq. of Blaker).

Referring to Fig. 41 and col. 33, line 23 et seq. of Suman (Fig. 1(a) and col. 2, line 16 et seq. of Blaker), there illustrates an example where subroutine 650 can realize the result desired by Suman. In this example, exit A of a highway includes service facility S_1 which is located a distance $D = 7$ miles from the current position of a vehicle, and exit B includes service facility S_2 which is located a distance $X = 32$ miles from the same. The distance-to-empty (DTE) allowed by the remaining fuel in the vehicle is 28 miles. In this example,

[t]hus, it is desired, in order to forewarn the vehicle operator of an impending out-of-fuel situation, to provide information to the vehicle operator as to the vehicle's present location and the locations of facilities S_1 and S_2 and their distance such that, prior to going beyond exit A, the vehicle operator receives a warning signal allowing the operator to exit at exit A and utilize the services of facility S_1 .

Col. 33, lines 41-48 of Suman (col. 2, lines 34-41 of Blaker).

This desired result can be realized by using subroutine 650 when applied to the above example, where the closer facility S_1 is selected because in this instance the distance of S_2

from the current position of the vehicle ($X = 32$ miles) $>$ distance-to-empty ($DTE = 28$ miles), in accordance with the logic of subroutine 650.

However, nowhere does Suman or Blaker teach or suggest “selecting the closer service provider to provide the maintenance service when the closer service provider is within a predetermined distance from the current location of the vehicle,” as claim 129 recites. Similarly, nowhere does Suman or Blaker teach or suggest selecting the “closest” service provider “to the current location of the vehicle” to provide the maintenance service when the closest service provider is “within a predetermined distance from the current location of the vehicle,” as claims 137 and 146 recite. For instance, when the claimed invention is applied to the above example, the closer S_1 would be selected provided that $D < a \text{ predetermined distance}$ (e.g., 5 miles), where D represents the distance of S_1 from the current location of the vehicle. By contrast, in Suman or Blaker the closer S_1 is selected provided that $X > DTE$, where X represents the distance of S_2 from the current location of the vehicle, and DTE varies from exit to exit on the highway when subroutine 650 is applied, which cannot be predetermined. As such, claims 129, 137 and 146, together with their dependent claims, are patentable over Blaker in view of Suman.

2. THE EXAMINER HAS FAILED TO ESTABLISH A *PRIMA FACIE* CASE OF OBVIOUSNESS UTILIZING ROSS IN VIEW OF SUMAN.

Ross discloses use of a PDA to process vehicle status information which is docked to a cradle running certain software. Based on the vehicle status information, the PDA determines, “should vehicle maintenance be required, the location and distance to the nearest repair facility.” Col. 10, lines 31-32 of Ross. However, as discussed before, the claimed invention, represented by claims 129, 137 and 146, requires that the selected service provider for providing the maintenance service satisfy two conditions, namely, (1) closest to the current location of the vehicle, and (2) within a predetermined distance from the current location of the vehicle. Thus, the nearest repair facility selected in Ross, at best, satisfies condition (1) only, and as agreed by the Examiner, Ross does not disclose that “the closer service provider is selected when the current vehicle position is within a predetermined distance,” as required in condition (2). Page 3

of the final Office Action (see Appendix B). However, the Examiner went on to postulate that Suman discloses condition (2). Nevertheless, contrary to the Examiner's postulation, Suman also fails to teach or suggest such a condition for the reasons stated above. As such, claims 129, 137 and 146, together with their dependent claims, are patentable over Ross in view of Suman.

3. THE EXAMINER AGREED ON THE RECORD THAT THE CLAIMED INVENTION IS DISTINGUISHABLE OVER BLAKER, AND THEREAFTER IMPROPERLY REJECTED THE SAME CLAIMED INVENTION BASED ON AN IDENTICAL DISCLOSURE TO BLAKER IN SUMAN.

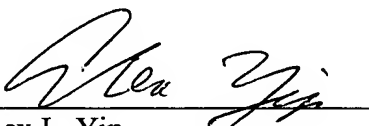
In an Office Action mailed January 13, 2003 (see Appendix C), the Examiner "agrees" with applicant that the prior art references, including Ross and Blaker, do not satisfy the above conditions (1) and (2) as in the claimed invention. *Id.* at p. 5. However, the Examiner cited Suman and erroneously rejected the same claimed invention based on an identical disclosure to Blaker in Suman, alleging that Suman discloses such two conditions. Applicant attempted to point out the apparent error by the Examiner in a Response to Office Action mailed April 1, 2003 (see Appendix D). To applicant's surprise, such a Response was met by the final Office Action (Appendix B).

Soon after receiving the final Office Action, applicant's representative arranged and conducted a telephonic interview with the Examiner to advance the prosecution of the present application. Applicant's good faith effort, however, was met by the Examiner's specious argument that Suman differs from Blaker in that "the Suman et al reference is far more extensive in its disclosure of how its vehicle communication system works." Interview Summary July 1, 2003 (See Appendix E). On the other hand, the Examiner relies on the disclosure at "column 33, lines 41-49;" and "column 34, lines 59-65" of Suman to reject the same claimed invention, which as pointed out before corresponds to col. 2, lines 34-42; and col. 4, lines 62-col. 5, line 1 of Blaker over which, as agreed by the Examiner, the claimed invention had overcome, and which as discussed hereinbefore does not render the claimed invention obvious. *See, supra*, at p. 4.

SUMMARY

In view of the foregoing arguments, it is clear that Suman, Blaker and Ross, taken singly or in combination, do not render obvious the invention set forth in Appellant's claims. Appellant submits that the Examiner is in error in the characterization of the references. Accordingly, it is respectfully requested that the rejections of Appellant's claims under 35 U.S.C. § 103 be reversed.

Respectfully submitted,
Michael L. Obradovich

By: 
Alex L. Yip
Attorney for Applicant
PTO Registration 34,759
(212) 836-7363

Date: November 7, 2003
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022-3598

A



CLAIMS ON APPEAL

129. A method for assisting a user of a vehicle comprising:
determining whether the vehicle needs a maintenance service;
obtaining data concerning locations of at least first and second service providers for providing the maintenance service when it is determined that the vehicle needs the maintenance service;
obtaining data concerning a current location of the vehicle;
determining, of the at least first and second service providers, a closer service provider to the current location of the vehicle based on the data concerning the current location of the vehicle and the data concerning the locations of the at least first and second service providers; and
selecting the closer service provider to provide the maintenance service when the closer service provider is within a predetermined distance from the current location of the vehicle.

130. The method of claim 129 further comprising communicating to the user information about the selected service provider when the selected service provider is within the predetermined distance from the current location of the vehicle.

131. The method of claim 130 wherein the information is communicated via audio media.

132. The method of claim 130 wherein the information is communicated visually.

133. The method of claim 129 wherein data concerning a location of the selected service provider is supplied to a navigator for providing directions to reach the location of the selected service provider.

134. The method of claim 129 wherein the data concerning the locations of the at least first and second service providers includes GPS data.

135. The method of claim 129 wherein the data concerning the current location of the vehicle includes GPS data.

136. The method of claim 129 wherein the selected service provider includes a service station.

137. A method for use in a system in a vehicle comprising:
storing data concerning locations of a plurality of service providers;
determining whether the vehicle needs a maintenance service;
retrieving at least part of the data in response to a determination that the vehicle needs the maintenance service;

comparing data concerning a current location of the vehicle with the retrieved data to identify one of the plurality of service providers which is closest to the current location of the vehicle and provides the maintenance service; and

selecting the identified service provider to provide the maintenance service when the identified service provider is within a predetermined distance from the current location of the vehicle.

139. The method of claim 137 further comprising communicating information about the selected service provider when the selected service provider is within the predetermined distance from the current location of the vehicle.

140. The method of claim 139 wherein the information is communicated via audio media.

141. The method of claim 139 wherein the information is communicated visually.

142. The method of claim 137 wherein data concerning a location of the selected service provider is supplied to a navigator for providing directions to reach the location of the selected service provider.

143. The method of claim 137 wherein the retrieved data includes GPS data.

144. The method of claim 143 wherein the selected service provider is selected based on the distance.

145. The method of claim 137 wherein the data concerning the current location of the vehicle includes GPS data.

146. A system for use in a vehicle comprising:

a memory for storing data concerning locations of a plurality of service providers;

a mechanism for determining whether the vehicle needs a maintenance service, at least part of the data being retrieved from the memory in response to a determination that the vehicle needs the maintenance service; and

a processor for comparing data concerning a current location of the vehicle with the retrieved data to identify one of the plurality of service providers which is closest to the current location of the vehicle and provides the maintenance service, the identified service provider being selected to provide the maintenance service when the identified service provider is within a predetermined distance from the current location of the vehicle.

148. The system of claim 146 further comprising an interface for communicating information about the selected service provider when the selected service provider is within the predetermined distance from the current location of the vehicle.

149. The system of claim 148 wherein the information is communicated via audio media.

150. The system of claim 148 wherein the interface includes a display element, and the information is displayed on the display element.

151. The system of claim 146 wherein data concerning a location of the selected service provider is supplied to a navigator for providing directions to reach the location of the selected service provider.

152. The system of claim 146 wherein the retrieved data includes GPS data.

153. The system of claim 146 wherein the data concerning the current location of the vehicle includes GPS data.

154. The system of claim 146 wherein the selected service provider includes a service station.

B





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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,346	01/02/2002	Michael L. Obradovich	9800.1028	8390

7590

06/16/2003

Alex L. Yip
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022

EXAMINER

GIBSON, ERIC M

ART UNIT

PAPER NUMBER

3661

DATE MAILED: 06/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



HN

Office Action Summary	Application No. 10/038,346	Applicant(s) OBRADOVICH, MICHAEL L.	
	Examiner Eric M Gibson	Art Unit 3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 129-137, 139-146 and 148-154 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 129-137, 139-146 and 148-154 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 129-137, 139-146 and 148-154 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al. (US005859628A) in view of Suman et al. (US006028537A).

Ross et al. discloses an apparatus and method for a personal onboard information system, wherein it is determined whether a vehicle needs a service, e.g., maintenance (column 10), positions or locations of the vehicle and at least one service providers are obtained using GPS (columns 8 and 10), and a service provider closest to the vehicle position is selected (column 10). According to Ross, there is provided a database or memory for storing service provider information, e.g., position (column 8). Furthermore, as explained in column 9, information is communicated via audio media or visual (display). A distance between the vehicle and the selected service provider is determined based on the acquired GPS positions of the vehicle and the service provider, and wherein the service provider is selected based on the determined distance (column 10). More particularly, Ross discloses that the system provides the user with information of the nearest rest area in response to the vehicle's position and direction. Route planning from the vehicle position to the service provider is also provided. As explained in column 10, should vehicle maintenance be required, the location and distance to the nearest repair facility is determined. It is inherent in the art that in order

to determine the distance between the vehicle and the service provider and to determine the closest or nearest service provider to the vehicle, the position of the vehicle has to be compared to the position of the service provider. However, Ross does not particularly disclose at least first and second service providers, wherein the closer service provider is selected when the current vehicle position is within a predetermined distance. Suman et al., on the other hand, discloses a vehicle communication and remote control system providing information to a user. According to Suman, as shown in figures 41 and 43 and described in columns 33-36, discloses obtaining data concerning at least two service providers, determining the closer service provider to the current position of the vehicle and selecting the closer service provider when the distance of the vehicle to the service provider is within a predetermined distance. In addition, as described in columns 2-3, Suman also provides route guidance. Thus, it would have been obvious to one of ordinary skill in the art, at the time of invention, to be motivated to modify the apparatus and method for a personal onboard information system of Ross by incorporating the features from the vehicle communication of Suman because such modification will ensure safe and accurate selection of the appropriate service provider.

2. Claims 129-137, 139-146 and 148-154 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blaker et al. (US005790973A) in view of Suman et al. (US006028537A).

Blaker et al. discloses a last exit warning system for a vehicle, wherein the current position of the vehicle and a plurality of service area locations are obtained

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using GPS. According to Blaker, the locations of the service areas can be stored in a memory or database. When it is determined that the vehicle needs service, e.g., refueling, a processor compares the position of the vehicle with the service area locations to determine which one is closer to the vehicle position. See columns 3 and 4. Furthermore, a distance from the vehicle to the service area locations is determined. Based on the determined distance, the closest service area is selected. As described in columns 4 and 5, the information is communicated via an audible or visual message and the position of the vehicle is compared to the positions of the service areas. However, Blaker does not particularly disclose at least first and second service providers, wherein the closer service provider is selected when the current vehicle position is within a predetermined distance. Suman et al., on the other hand, discloses a vehicle communication and remote control system providing information to a user. According to Suman, as shown in figures 41 and 43 and described in columns 33-36, discloses obtaining data concerning at least two service providers, determining the closer service provider to the current position of the vehicle and selecting the closer service provider when the distance of the vehicle to the service provider is within a predetermined distance. In addition, as described in columns 2-3, Suman also provides route guidance. Thus, it would have been obvious to one of ordinary skill in the art, at the time of invention, to be motivated to modify the apparatus and method for a last warning exit system of Blaker by incorporating the features from the vehicle communication of Suman because such modification will ensure safe and accurate

selection of the appropriate service provider and provide a warning to the driver when the closer service provider is near.

Response to Arguments

3. Applicant's arguments filed 4/10/2003 have been fully considered but they are not persuasive.

a. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

b. The applicant does not specifically point out which limitations the combination of references fail to show with respect to the language used in the claims. The applicant rests patentability on the contention that the Examiner agreed the prior art did not teach a certain limitation and therefore the newly cited references, which do teach the limitations, cannot teach the limitations because they are duplicative of the original reference. Whether or not the teaching of the second reference is found in the first reference, which may have been overlooked by the Examiner, is irrelevant to whether or not the combination of the references teach the claimed invention. To this end, the applicant has not included any assertion of a lack of teaching in the combination in order to reconsider the rejection of the claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3661

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric M Gibson whose telephone number is (703) 306-4545. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (703) 308-3873. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

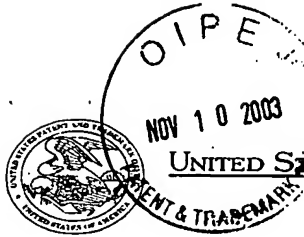
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

EMG
June 11, 2003


MICHAEL J. ZANELLI
PRIMARY EXAMINER

C





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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,346	01/02/2002	Michael L. Obradovich	9800.1028	8390

7590

01/13/2003

Alex L. Yip
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022

EXAMINER

LOUIS JACQUES, JACQUES H

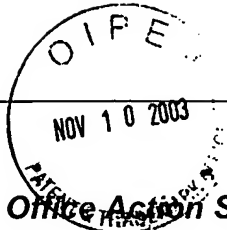
ART UNIT

PAPER NUMBER

3661

DATE MAILED: 01/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary	Application No. 10/038,346	Applicant(s) OBRADOVICH, MICHAEL L.	
	Examiner Jacques H. Louis-Jacques	Art Unit 3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 129-145 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 129-154 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>9</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 129-154 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al [5,859,628] in view of Suman et al [6,028,537].

Ross et al '628 discloses an apparatus and method for a personal onboard information system, wherein it is determined whether a vehicle needs a service, e.g., maintenance (column 10), positions or locations of the vehicle and at least one service providers are obtained using GPS (columns 8 and 10), and a service provider closest to the vehicle position is selected (column 10). According to Ross, there is provided a database or memory for storing service provider information, e.g., position (column 8). Furthermore, as explained in column 9, information is communicated via audio media or visual (display). A distance between the vehicle and the selected service provided is determined based on the acquired GPS positions of the vehicle and the service provider, and wherein the service provider is selected based on the determined distance (column 10). More particularly, Ross discloses that the system provides the user with information of the nearest rest area in response to the vehicle's position and direction. Route planning from the vehicle position to the service provider is also provided. As explained in column 10, should vehicle maintenance be required, the location and distance to the nearest repair

Art Unit: 3661

facility is determined. It is inherent in the art that in order to determine the distance between the vehicle and the service provider and to determine the closest or nearest service provider to the vehicle, the position of the vehicle has to be compared to the position of the service provider. However, Ross does not particularly disclose at least first and second service provides, wherein the closer service provider is selected when the current vehicle position is within a predetermined distance. Suman et al, on the other hand, disclose a vehicle communication and remote control system providing information to a user. According to Suman et al, as shown in figures 41 and 43 and described in columns 33-36, discloses obtaining data concerning at least two service providers, determining the closer service provider to the current position of the vehicle and selecting the closer service provide when the distance of the vehicle to the service provider is within a predetermined distance. In addition, as described in columns 2-3, Suman et al also, provides route guidance. Thus, it would have been obvious to one skilled in the art at the time of the invention to be motivated to modify the apparatus and method for a personal onboard information system of Ross by incorporating the features from the vehicle communication of Suman et al because such modification will ensure safe and accurate selection of the appropriate service provider.

3. Claims 129-154 are rejected under 35 U.S.C. 102(e) as being anticipated by Blaker et al [5,790,973] in view of Suman et al [6,028,537].

Blaker et al discloses a last exit warning system for a vehicle, wherein the current position of the vehicle and a plurality of service areas locations areas obtained using GPS. According to Blaker et al, the locations of the service areas can be stored in a

Art Unit: 3661

memory or database. When it is determined that the vehicle needs service, e.g., refueling, a processor compares the position of the vehicle with the service area locations to determine which one is closer to the vehicle position. See columns 3 and 4. Furthermore, a distance from the vehicle to the service area locations is determined. Based on the determined distance, the closest service area is selected. As described in columns 4 and 5, the information is communicated via an audible or visual message and the position of the vehicle is compared to the positions of the service areas. However, Blaker et al does not particularly disclose at least first and second service providers, wherein the closer service provider is selected when the current vehicle position is within a predetermined distance. Suman et al, on the other hand, disclose a vehicle communication and remote control system providing information to a user. According to Suman et al, as shown in figures 41 and 43 and described in columns 33-36, discloses obtaining data concerning at least two service providers, determining the closer service provider to the current position of the vehicle and selecting the closer service provide when the distance of the vehicle to the service provider is within a predetermined distance. In addition, as described in columns 2-3, Suman et al also, provides route guidance. Thus, it would have been obvious to one skilled in the art at the time of the invention to be motivated to modify the a last exit warning system for a vehicle of Blaker et al by incorporating the features from the vehicle communication of Suman et al because such modification will ensure safe and accurate selection of the appropriate service provider and provide a warning to driver when the closer service provider is near.

Response to Amendment & Arguments

4. The amendments along with the arguments filed therewith have been entered and carefully considered by the examiner.

Applicant has amended the claims to recite obtaining data concerning “locations of at least first and second service providers”, “determining, of the at least first and second service providers, a closed service provider to the current location of the vehicle based on the data concerning the current location of the vehicle and the data concerning the locations of the at least first and second service providers”, and selecting the closer service providers “when the closer service provider is within a predetermined distance from the current location of the vehicle.” Emphasis added. Applicant then contended that the prior art references do not satisfy the two conditions of “determining the closest service provider and selecting the closer service provide when the distance between the vehicle and the service provider is within a predetermined distance. Emphasis added.

The examiner agrees with Applicant. However, upon conducting a supplemental (updated) search, the patents to TENDLER (US 2002/0068549) and Suman et al (6028537) have been discovered, which disclose the added claimed limitations.

In particular, Suman et al, as shown in figures 41, 43 and described in columns 33-36, discloses obtaining data concerning at least two service providers, determining the closer service provider to the current position of the vehicle and selecting the closer service provide when the distance of the vehicle to the service provider is within a predetermined distance.

Thus, in light of this discovery, the claims remain rejected and this office action is made non-final.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US2002/0068549

Tendler

Jun. 2002

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques H. Louis-Jacques whose telephone number is (703) 305-9757. The examiner can normally be reached on M-Th, 7:30 AM - 4:00 PM (Eastern Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William A. Cuchlinski can be reached on (703) 308-3873. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1111.

Jacques H. Louis-Jacques
Primary Examiner
Art Unit 3661

/jlj
January 7, 2003

Jacques H. Louis-Jacques
JACQUES H. LOUIS-JACQUES
PRIMARY EXAMINER

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Substitute for form 1449A/PTO

**SUPPLEMENTAL
INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

(use as many sheets as necessary)

Sheet 1 of 1

Complete if Known

Application Number	10/038,346
Filing Date	1/2/02
First Named Inventor	M. Obradovich
Group Art Unit	3661
Examiner Name	J. Louis-Jacques
Attorney Docket Number	09800-1028

U.S. PATENT DOCUMENTS

Examiner Initials*	Cite No.1	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document MM-DD-YYYY	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number	Kind Code? (if known)			
JW		5,058,044		Stewart et al.	10/15/91	
		5,400,018		Scholl et al.	03/21/95	
		5,572,204		Timm et al.	11/05/96	
		5,686,910		Timm et al.	11/11/97	
		5,687,215		Timm et al.	11/11/97	
		5,844,473		Kaman	12/1/98	
		5,917,408		Cardillo et al.	06/29/99	
		5,931,878		Chapin, Jr.	08/03/99	
		5,963,861		Hanson	10/05/99	
		6,029,069		Takaki	02/22/00	
		6,141,608		Rother	10/31/00	
		6,240,365		Bunn	05/29/01	
		6,259,405		Stewart et al.	07/10/01	
		6,301,480		Kennedy, III et al.	10/09/01	
JW		6,326,918		Stewart	12/04/01	

FOREIGN PATENT DOCUMENTS

[illegible]

RECEIVED
NOV 29 2002
GROUP 3600

Examiner Signature	J. Louis-Jacques
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Date Considered	1/7/03
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Unique citation designation number. ² See attached Kinds of U.S. Patent Documents. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

Burden Hour Statement: This form is estimated to take 2.0 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U. S. Patent and Trademark Office, Washington, DC 20231. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.**

Notice of References Cited

NOV 10 2003

Application/Control No.

10/038,346

Applicant(s)/Patent Under
Reexamination
OBRADOVICH, MICHAEL L.

Examiner

Jacques H. Louis-Jacques

Art Unit

3661

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-2002/0068549	06-2002	TENDLER, ROBERT	455/414
	B	US-6,028,537	02-2000	Suman et al.	340/988
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

D





IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

Inventor(s) M. L. Obradovich

Case 9800.1028

Serial No. 10/038,346

Examiner J. Louis Jacques

Filing Date January 2, 2002

Group Art Unit 3661

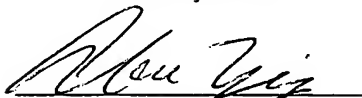
Title Multimedia Information and Control System for Automobiles

RESPONSE TO OFFICE ACTION

I hereby certify that this paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on April 1, 2003.

Alex L. Yip

Attorney Name


Signature

34,759

Registration No.

April 1, 2003

Date of Signature

**THE COMMISSIONER OF PATENTS AND TRADEMARKS
WASHINGTON, D.C. 20231**

Sir:

In response to the Office Action dated January 13, 2003 in the above-referenced patent application, applicant respectfully submits the following remarks:

Serial No. 10/038,346

Remarks

In the present Office Action, the Examiner rejected claims 129-154 under 35 U.S.C. 103(a) as being allegedly unpatentable over Ross in view of Suman. In addition, the Examiner rejected the same claims as being allegedly unpatentable over Blaker in view of Suman. These rejections are respectfully traversed.

I. Previous Office Action and Response

In traversing the Examiner's rejections, a summary of the previous office Action (mailed on August 14, 2002) and applicant's Second Amendment (mailed on November 19, 2002) responsive thereto is provided as follows:

In the previous Office Action, the Examiner rejected claims 129-154 as being allegedly unpatentable over Ross. In addition, the Examiner rejected claims 129-132, 134-141, 143-150, and 152-154 as being allegedly unpatentable over Blaker. The Examiner also rejected claims 133, 142 and 151 as being allegedly unpatentable over Blaker in view of DeGraaf.

In response to the previous Office Action, applicant submitted the Second Amendment, in which applicant amended, among others, independent claims 129, 137 and 146 to overcome Ross, Blaker and DeGraaf.

II. Response to the Present Office Action

In the present Office Action, the Examiner admittedly "agrees with Applicant" that "the prior art references [i.e., Ross, Blaker and DeGraaf] do not satisfy the two conditions" required in the claimed invention. Page 5 of the present Office Action.

Nevertheless, the Examiner cited a new reference Suman, and in particular Figs. 41 and 43, and columns 33-36 therein to reject the claimed invention. However, the relevant portions of Suman cited by the Examiner are duplicative of Blaker, which, the

Serial No. 10/038,346

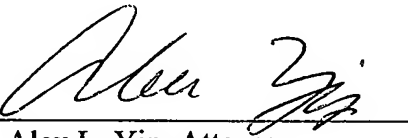
Examiner admitted, had been overcome by applicant. Specifically, Figs. 41 and 43 of Suman correspond to Figs. 1(a) and 4 of Blaker. The relevant text of Suman at col. 33, line 23 through col. 35, line 56 corresponds to the text of Blaker at col. 2, lines 16-59 and col. 4, line 6 through col. 5, line 58.¹

Because the Examiner has not presented new material to reject the claimed invention, and because the Examiner agreed that applicant had overcome the cited art including Blaker (same as Suman for all intents and purposes here), all of the present rejections should be withdrawn.

In view of the foregoing, each of claims 129-137, 139-146 and 148-154 is believed to be in condition for allowance. Accordingly, reconsideration of these claims is requested and allowance of the application is earnestly solicited.

Respectfully,

Michael L. Obradovich

By 
Alex L. Yip, Attorney
Reg. No. 34,759
212-836-7363

Date: April 1, 2003
Enclosures

1

Although the Examiner also cited col. 36 of Suman, it is, however, directed to vehicle personalization and remote control functions which is not applicable to the claimed invention.



E



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,346	01/02/2002	Michael L. Obradovich	9800.1028	8390

7590

07/03/2003

Alex L. Yip
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022

EXAMINER

GIBSON, ERIC M

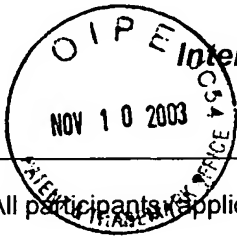
ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 07/03/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.



Interview Summary

Application No.	Applicant(s)	
10/038,346	OBRADOVICH, MICHAEL L.	
Examiner	Art Unit	
William A. Cuchlinski, Jr.	3661	

All participants (applicant, applicant's representative, PTO personnel):

- (1) William A. Cuchlinski, Jr. (3) Alex Yip.
(2) Eric Gibson. (4) _____

Date of Interview: 01 July 2003.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.
If Yes, brief description: _____

Claim(s) discussed: N/A.

Identification of prior art discussed: Blaker et al. (5,790,973) and Suman et al. (6,028,537).

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant's representative contended that the examiner stated, in the Office action of Jan. 13, 2003 at page 5, that he agreed with applicant that the references do not satisfy the two conditions of "determining the closest service provider and selecting the closer service provider when the distance between the vehicle and the service provider is within a predetermined distance." The examiner goes on to state in the very next paragraph that "upon conducting a supplemental (updated) search, the patents to Tendler (US 2002/0068549) and Suman et al. (6028537) have been discovered, which disclose the added claimed limitations". The claims were then rejected as unpatentable over Ross et al. in view of Suman et al. and also as unpatentable over Blaker et al. in view of Suman et al. In response to the outstanding rejection applicant argued that "the relevant portions of Suman cited by the examiner are duplicative of Blaker, which, the Examiner admitted, had been overcome by applicant." Upon examination of both the Blaker et al. reference and the Suman et al. reference, this was found to be incorrect. While portions of both references may be similar, the Suman et al reference is far more extensive in its disclosure of how its vehicle communication system works. The disclosure includes an onboard self-diagnostic system. Also, at column 33, lines 41-49 and column 34, lines 59-65 Suman et al. discloses how the system will select the closer service station to obtain fuel and other services, when the service station is within a predetermined distance (the range of the vehicle with the fuel remaining in the tank) from the current location of the vehicle. Applicant's representative, in the response of April 7, 2003, had not specifically pointed out the supposed errors in the examiner's action and had not replied to every ground of objection and rejection in the prior Office action, of January 13, 2003, as required by 37 CFR 1.111(b). Therefore the next office action repeated the rejections of the Office action of January 13, 2003, responded to applicant's arguments and was properly made Final.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

WILLIAM A. CUCHLINSKI, JR.

~~SUPERVISORY PATENT EXAMINER~~

TECHNOLOGY CENTER 3600

Examiner Note: You must sign this form unless it is an

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.